

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Son Phan-Anh et al.

Title: RECOVERY TECHNIQUES IN MOBILE NETWORKS

Appl. No.: 09/802,861

Filing Date: 3/12/2001

Examiner: Nghi H. Ly

Art Unit: 2617

Confirmation 3307

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above-referenced application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per procedure set forth in 37 C.F.R. § 1.705(d) to support their contention that the patent term adjustment should be 1643 days instead of 449 days as calculated by the United States Patent and Trademark Office (USPTO).

The Patent Office determined that the patent was entitled to 449 days of PTA. Applicants believe that this PTA determination was made in accordance with the "Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)" published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On January 7, 2010, the U.S. Court of Appeals for the Federal Circuit affirmed the September 30, 2008 decision of the United States District Court for the District of Columbia finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect.

*Wyeth v. Kappos*, No. 2009-1120 (Jan. 7, 2010). The Federal Circuit determined that "[b]efore the three-year mark, no 'overlap' can transpire between the A delay and the B delay," and that "[i]f an A delay occurs on one day and a B delay occurs on a different day, those two days do not 'overlap' under section 154 (b)(2)."

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 1643 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 1817 days

(b) Total Applicant delay: 174 days

Final PTA Determination: 1643 days

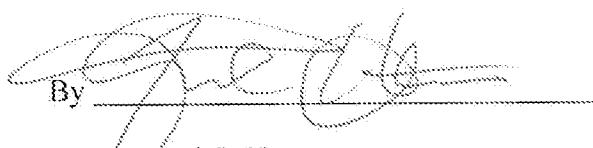
Applicants therefore respectfully request that the patent be accorded 1643 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By 

Paul S. Hunter  
Attorney for Applicant  
Registration No. 44,787

Date February 22, 2010

FOLEY & LARDNER LLP  
Customer Number: 23524  
Telephone: (608) 258-4263  
Facsimile: (608) 258-4258

[CLOSE WINDOW](#)[All Cases](#) [Select Case](#) Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 088245-0137  
 Application Number: 09/802861  
 Patent Number: N/A

|             | Event Description                                       | Event Date | Days from Filing | PTO Days | Applicant Days |
|-------------|---|------------|------------------|----------|----------------|
| Edit Delete | Application Filing Date                                 | 03/12/2001 | 0                |          |                |
|             | 14 month From Application date                          | 05/12/2002 | 426              |          |                |
| Edit Delete | Non-Final Office Action                                 | 11/28/2003 | 991              | 585      |                |
|             | Non-Final Office Action + 3 months                      | 02/28/2004 | 1,083            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rec'd at PTO               | 03/01/2004 | 1,085            |          | 2              |
|             | 3 Year Period Starts                                    | 03/12/2004 | 1,096            |          |                |
| Edit Delete | Non-Final Office Action                                 | 05/21/2004 | 1,186            |          |                |
|             | Non-Final Office Action + 3 months                      | 08/21/2004 | 1,258            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rec'd at PTO               | 10/21/2004 | 1,319            |          | 61             |
|             | Non-Final Office Action Rsp. Rec'd at PTO + 4 mo        | 02/21/2005 | 1,442            |          |                |
| Edit Delete | Final Office Action                                     | 04/06/2005 | 1,486            | (44)     |                |
|             | Final Office Action + 3 months                          | 07/05/2005 | 1,577            |          |                |
| Edit Delete | Notice of Appeal Received at PTO                        | 10/06/2005 | 1,669            |          | 92             |
| Edit Delete | Appeal Brief Received at PTO                            | 04/06/2006 | 1,851            |          |                |
| Edit Delete | Non-Final Office Action                                 | 06/30/2006 | 1,936            |          |                |
|             | Non-Final Office Action + 3 months                      | 09/30/2006 | 2,028            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rec'd at PTO               | 10/19/2006 | 2,047            |          | 19             |
| Edit Delete | Restriction Requirement                                 | 01/08/2007 | 2,126            |          |                |
| Edit Delete | Restriction Requirement Response Received at PTO        | 02/08/2007 | 2,159            |          |                |
| Edit Delete | Final Office Action                                     | 05/08/2007 | 2,248            |          |                |
| Edit Delete | Request For Continued Examination (including amendment) | 08/02/2007 | 2,334            | 1338     |                |
|             | 3 Year Period Stopped                                   | 08/02/2007 | 2,334            |          |                |
| Edit Delete | Non-Final Office Action                                 | 10/11/2007 | 2,404            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rec'd at PTO               | 01/03/2008 | 2,486            |          |                |
| Edit Delete | Non-Final Office Action                                 | 04/08/2008 | 2,584            |          |                |
| Edit Delete | Non-Final Office Action Rsp. Rec'd at PTO               | 06/10/2008 | 2,647            |          |                |

|      |        |  |            |         |       |
|------|--------|--|------------|---------|-------|
| Edit | Delete | Non-Final Office Action                          | 09/23/2008 | 2,752   |       |
| Edit | Delete | Non-Final Office Action Rsp. Rec'd at PTO        | 12/22/2008 | 2,842   |       |
|      |        | Non-Final Office Action Rsp. Rec'd at PTO + 4 mo | 04/22/2009 | 2,963   | 14    |
| Edit | Delete | Final Office Action                              | 05/06/2009 | 2,977   |       |
| Edit | Delete | Final Office Action Response Received at PTO     | 07/11/2009 | 3,043   |       |
| Edit | Delete | Non-Final Office Action                          | 08/04/2009 | 3,067   |       |
| Edit | Delete | Non-Final Office Action Rsp. Rec'd at PTO        | 08/25/2009 | 3,088   |       |
| Edit | Delete | Notice of Allowance                              | 11/25/2009 | 3,180   |       |
|      |        | Projected Patent Grant Date                      | 06/08/2010 | 3,375   |       |
|      |        |  |            | Totals: | 1,817 |
|      |        |  |            | PTA:    | 174   |
|      |        |  |            |         | 1,643 |

Created and maintained by  
  
FOLEY & LARDNER LLP

Version: 3.02.06

LOGIN: Kimberly A. Carter

(P) 402.442.2233

Foley &amp; Lardner LLP